

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

FEB 28 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

MARIO ALBERTO RICHARDS-DIAZ,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 03-74709

Agency No. A35-001-128

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted February 9, 2006**
Pasadena, California

Before: THOMPSON, T.G. NELSON, and GOULD, Circuit Judges.

Mario Alberto Richards-Diaz petitions for review of the Board of Immigration Appeals' affirmance of the Immigration Judge's denial of his applications for a waiver of deportation under 8 U.S.C. § 1182(c), and cancellation

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

of removal under 8 U.S.C. § 1229b. This court has jurisdiction under 8 U.S.C. § 1252(a)(2)(D) and we deny his petition for review.

Even if Richards-Diaz is eligible for a discretionary waiver for his 1996 offense, he is still removable because he is ineligible for a discretionary waiver for his 1997 offense or for cancellation of removal. Richards-Diaz does not qualify for a discretionary waiver for his 1997 offense because he was convicted of being under the influence of methamphetamine after the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) § 440(d) went into effect.¹ Under AEDPA as it existed then, aliens convicted of certain enumerated offenses, including drug-related crimes, were not eligible for discretionary waivers.² Therefore, the Immigration Judge properly concluded that Richards-Diaz was ineligible for a discretionary waiver of deportation for his 1997 offense.

The Immigration Judge also properly denied Richards-Diaz’s application for cancellation of removal. Section 1229b(b)(1)(C) prohibits cancellation of removal when an alien is convicted of an aggravated felony.³ Richards-Diaz does not

¹ 8 U.S.C. § 1182(c) (1996), *repealed by* Illegal Immigration Reform and Immigrant Responsibility Act of 1996, § 304(b), Pub. L. No. 104-208, 110 Stat. 3009-597.

² *Id.*

³ 8 U.S.C. § 1229b(b)(1)(C).

dispute that on February 21, 1996, he was convicted of an aggravated felony, transportation of a controlled substance (methamphetamine). Therefore, cancellation of removal is not available to him.

Because Richards-Diaz is ineligible for either form of relief, we deny his petition for review.

PETITION DENIED.